

C.10.3.

TO: MSSNY's Officers, Councilors and Trustees

FROM: MSSNY's Legislative & Physician Advocacy Committee

DATE: October 20, 2016

**RE: Resolution 108 – 2016 House of Delegates
Board Certification in Advertisements or Marketing Materials to the Public
*New York State Society of Plastic Surgeons, New York State Society of Orthopaedic Surgeons, New York State Ophthalmological Society, New York State Society of Otolaryngology- Head and Neck Surgery***

The following resolution was referred to the Council by the House of Delegates after extensive back and forth discussion at the House of Delegates. The resolution was forwarded to the Legislative and Physician Advocacy Committee for further study and recommendation for the Council's consideration:

RESOLVED, that Policy number 240.987 be amended to read, MSSNY will advocate for proactive enforcement of New York State regulation that gives patients the necessary information to make informed decisions about who is providing their health care and also seek enactment of legislation to require all health care professionals in all health care settings to wear identification tags that state their professional designation in large block letters PHYSICIAN, NURSE, PHYSICIAN ASSISTANT, etc., and, to state which of the American Board of Medical Specialties certifying board(s) he/she is certified with in any and all advertisements or marketing materials to the public.

To begin with, there was extensive testimony in support of this resolution during the Reference Committee hearing at the HOD. The Reference Committee was informed that MSSNY has for several years participated collegially with other state and national specialty societies and the AMA in advancing Truth in Advertising legislation to assure that patients are adequately informed of the credentials of the health care professional treating them. It was reported that studies confirm increasing patient confusion regarding the many types of health care providers – including physicians, nurses, physician assistants, technicians and other varied providers. A survey conducted by the AMA's Scope of Practice Partnership revealed that: 54% of patients incorrectly believe an optometrist is a medical doctor; 35% of patients believe a nurse with a "doctor of nursing practice" degree is a medical doctor; and 44 % of patients believe it is difficult to identify who is a licensed medical doctor and who is not by reading what services they offer, their title and other licensing credentials in advertising or other marketing materials.

The legislation currently before the Legislature would require: (1) that advertisements for services to be provided by health care practitioners identify the type of professional license held by the health care professional; (2) all advertisements to be free from any and all deceptive or misleading information; and (3) health care practitioners to wear an identification name tag during patient encounters that includes the type of license held by the practitioner. Several of those who testified asked that the issue of identification name tags on which MSSNY already has a policy should be treated separately from the issue of education background and board credentials. Consequently, the Reference

Committee recommended the HOD adopt a substitute resolution which generally supported legislative efforts to require physicians to truthfully disclose their educational background and board certification where applicable in all advertising to the public.

During the HOD debate, the NYS Society of Orthopedic surgeons introduced amendments to require physicians to disclose their ABMS and AOA credentials in their advertisements. The Reference Committee had considered but rejected the addition of this language. They had been informed that the aforementioned bill when originally introduced in 2013 also contained a provision that prohibited a physician from holding themselves out to the public as being board certified unless the advertisement stated the full name of the certifying board but only if the board is a member board of the American Board of Medical Specialties (ABMS) or American Osteopathic Association (AOA). This language sought to prohibit a physician who is board certified by the American Board of Physician Specialties (ABPS) or another non-ABMS/AOA Board from advertising those credentials as being the same as those secured by an ABMS or AOA Board. The ABPS consists of 12 governing boards that oversee physician board certification for 18 specialties and subspecialties and is the official board certifying body for the American Association of Physician Specialties (AAPS). It is alleged that the board certification standards of one or more of the ABPS Boards are not synonymous with the standards of ABMS/AOA Boards and that any board certification credential that would allow the public to consider the credentials of a ABMS/AOA physician to be the same as the credentials of a ABPS credentialed physician would be misleading to the public. The AAPS has unsuccessfully sued NYS twice for recognition of the ABPS board certification as part of the physician profile.

The Reference Committee agreed with the sponsors of the Resolution that the public should be afforded the ability to choose between similarly educated and trained physicians based upon a recognized standard board certification afforded through the ABMS and AOA. However, because they were concerned that it could engender a negative reaction from physicians who are boarded by the ABPS or other non ABMS/AOA Boards, they believed it best was to shape the Resolution in general terms.

There were a number of issues raised on the floor of the House. First, there was concern advanced by the NYS Society of Anesthesiology that they did not want to see an existing MSSNY policy (which they had successfully advanced at a previous HOD) amended or modified by the addition of wording which relates to a separate issue. Second, there were concerns with granting more power to the ABMS in light of recent concerns raised regarding Maintenance of Certification (MOC). Lastly, there was the concern about whether to recognize only ABMS/AOA board certification in advertisements. There appeared to be a difference of opinion on this point.

Given all these concerns, the Resolution was referred to allow Council to review and contemplate the complexities of its impact upon physician practice and quality of care.

At the September 7 meeting, the Committee on Legislative and Physician Advocacy listened to an explanation of the history and the concerns presented by the sponsors of the Resolution. They recognized and discussed many of the same issues raised during the debate at the HOD. It appeared that there was general agreement on three points: (1) that whatever policy is approved should be separate and distinct from any other policy including MSSNY Policy 240.987; (2) that any policy developed by MSSNY should not give the ABMS any greater standing or power until there has been satisfactory resolution of the MOC issue; and (3) efforts to assure truth in advertising

among non-physician health professionals is different from efforts to assure truth in advertising among physicians. The Committee did not resolve the issue as to whether only physicians who have board certification from an ABMS or AOA Board should be allowed to so specify their board credentials on their advertisements. Consequently, to attempt to reconcile these many concerns, staff recommended a “compromise” Resolution to present to the Committee that was advanced by DGA B Reference Committee at the House of Delegates that stated the following:

RESOLVED, that the Medical Society of the State of New York support legislative and regulatory efforts to require that physicians truthfully disclose their educational background and board certification where applicable in all advertising to the public.

After extensive debate at the October 19 meeting the above “compromise” substitute resolution failed to get the support of a majority of Committee physicians due to concerns that the use of the general term “board certification” could, in effect, validate certifying boards that may not have the extensive professional discipline of boards authorized by the ABMS and AOA. The committee then reverted to considering language similar to the original resolution that would limit the use of the term “board certified” in advertisements to specialties recognized by the ABMS and AOA. However, this recommendation also did not garner a majority of Committee members participating in the meeting. At the same time, Committee members also expressed support for the principle articulated in the policy statement that the proposed resolution would amend, and suggested that we should re-affirm the existing MSSNY Policy calling for the wearing of ID tags by all health care professionals in all health care settings.

RECOMMENDATION: That the MSSNY Council adopt the following substitute Resolution in lieu of Resolution 108.

RESOLVED, that the Medical Society of the State of New York re-affirm MSSNY Policy 240.987